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ABSTRACT

Educators need to be aware of sex discrimination in their schools and of the legislation that prohibits it, because it entails costs, liabilities, impact, and responsibilities for every educator. The obvious and direct costs are attorney fees, awarded damages, and settlement costs. Other, less obvious costs are unfavorable publicity, erosion of a district's reputation, morale problems, and subsequent enrollment and recruitment difficulties. The sources of legal responsibility are Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964. Sex discrimination and sexual harassment affects students and employees. The school district, as well as each educator, has the responsibility to create a safe and equitable learning environment. The legal definition of sexual harassment has three conditions--two constitute quid pro quo harassment, and the other is hostile environment harassment. Very few Ohio schools have clear, comprehensive sexual harassment policies. A strict, detailed policy is critical. Articulating the policy to students, teachers, staff, administrators, and employers of vocational students is essential. Title IX requires all school districts receiving federal funds to have grievance procedures to handle complaints of sex discrimination. The formal procedure outlines how to conduct an investigation, who is involved in determining policy violations, how to apply appropriate sanctions, and how to appeal the process. (Six references and 11 resources are listed.) (YLB)

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Equity Issues

Ohio Vocational Sex Equity

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TO THE EDUCATIONAL RESOURCES
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Addressing Sex Discrimination and Sexual Harassment: Your Responsibilities as an Educator

An employer who hires auto tech students for early placement opportunities refuses to interview your top three students because they are girls.

A cosmetology patron brushes against a male student's genitals and makes sexual comments while he is styling her hair.

A male teacher offers to tutor a female student after school at a local restaurant. After several tutoring sessions and no improvement in grades, the teacher tells her that unless she has sex with him she will not pass the class.

A guidance counselor tells a male student that the vocational data processing program is "for girls" and that he should enroll in drafting instead.

Each of the above incidences are real situations encountered in schools and vocational programs. Each violates federal law and is a form of sex discrimination. Each demoralizes and devalues school districts, their employees, and their students.

The purpose of this issue paper is to provide educators with explanations of the federal laws and terminology associated with sex discrimination. It will use facts and examples to show the continuing prevalence of sex discrimination in schools. Lastly, it will outline the elements of a school policy on sex discrimination and sexual harassment, discuss grievance procedures, and suggest ways to distribute the policy.

Cost, Liability, Impact, and Responsibility

Educators need to be aware of sex discrimination in their schools and of the legislation that prohibits it. Sex discrimination, including sexual harassment in its most blatant and most subtle forms, entails costs, liabilities, impact, and responsibilities for every educator.

The costs of sex discrimination and sexual harassment are high. The obvious and direct costs are attorney fees, awarded damages, and/or settlement costs. Depending on which federal laws school districts are violating, they may not receive federal funding and victims may receive punitive and monetary compensation for back and front pay, including lost benefits and damages. In addition, the law holds individuals employed by or working with school districts personally liable and these individuals may suffer monetary damages through injunctions. Other less obvious costs are unfavorable publicity, the erosion of a district's reputation, morale problems among staff members, and subsequent enrollment and recruitment difficulties.

Sexual discrimination and sexual harassment are illegal, creating liability for the school district, educators, and other affiliated businesses/institutions. All parties may be liable if they fail to carry out their responsibility to prevent and stop discrimination and harassment. Minimizing that risk of liability is critical.

The sources of legal responsibility are Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964. Under Title IX, the law prohibits school districts receiving federal financial assistance from discriminating against students based on their sex. Sexual harassment, as a form of sex discrimination, falls under this law. Title IX protects students, including those participating in employment programs, early placement, advanced placement, or any situation in which the school is involved with the placing of students into employment. It holds school districts, administrators, teachers, and even support and custodial staff personally liable if they are found to be in reckless disregard and may require them to pay punitive damages. The vocational school district and

its employees are also liable for the treatment of students by customers or clients. For instance, students in vocational programs such as auto technology, cosmetology, or graphic arts perform services for the public. If a customer of these services harasses a student, the school district and its employees are liable for the harassment of that student. The U.S. Department of Education enforces Title IX. However, local school districts are responsible for identifying a local Title IX coordinator to enforce the law and handle complaints.

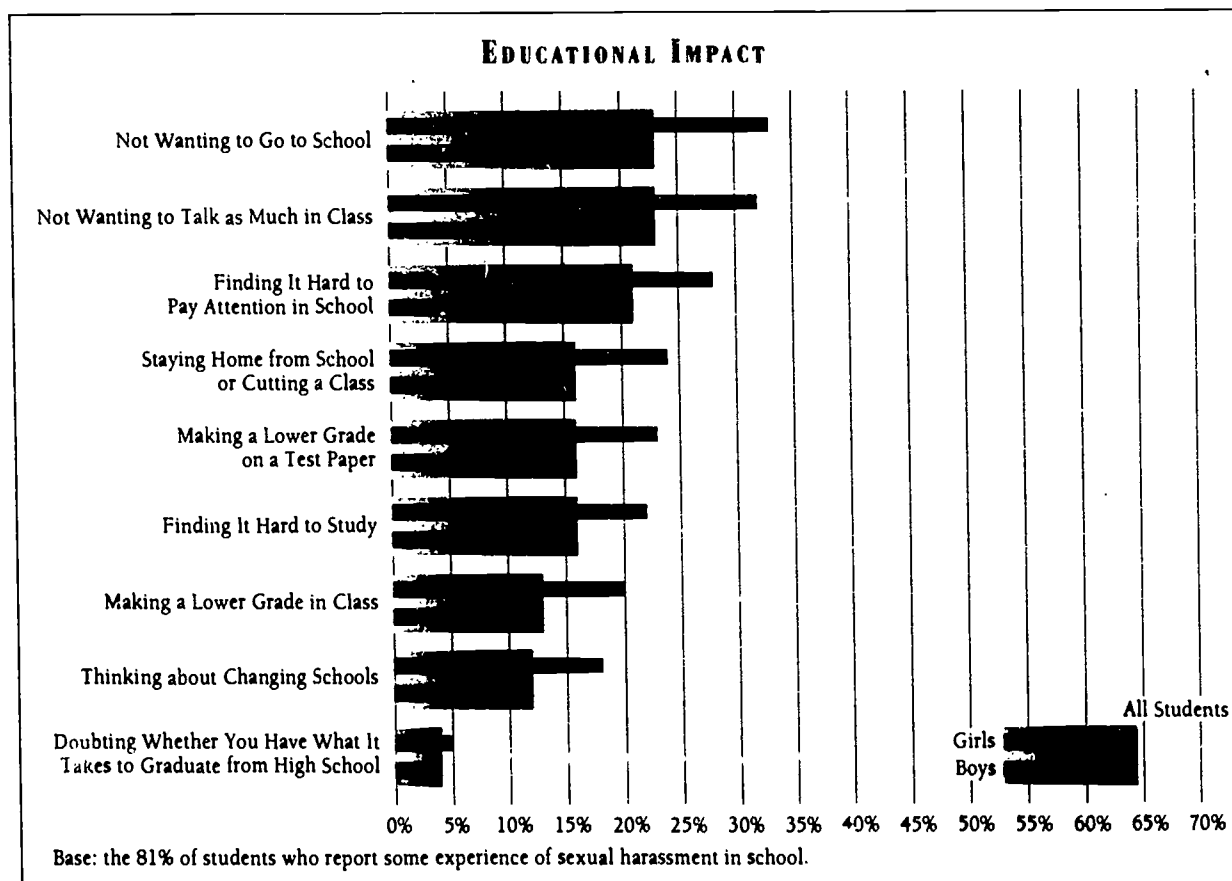
Example of a Title IX violation: A female enrolled in a machine trades class is constantly subjected to sexual advances, comments, and touching by the boys in the class. The teacher is aware of this behavior and does nothing to stop it. At times the teacher encourages the boys to harass the student, saying that they are just preparing her for the "real world."

Under Title VII, employers (including school districts) with over 15 or more employees, labor organizations, and employment agencies are prohibited from discriminating based on sex, race, color, religion, or national origin in all aspects of employment. Again, this also prohibits sexual

harassment. The law protects employees and students participating in employment programs. The Civil Rights Act of 1991 expands the areas to allow victims to receive punitive and compensatory damages. In addition, recovery of past financial losses, including medical expenses, are not limited. The Equal Employment Opportunity Commission (EEOC) and the Ohio Civil Rights Commission are responsible for enforcing the law.

Example of a Title VII violation: A well-known dentist in the community frequently hires graduates from the dental assisting program. He specifically tells the vocational teacher that he will only consider attractive, blue-eyed blonde females for his position openings.

Sex discrimination and sexual harassment impacts students and employees. The June 1993 survey, commissioned by the American Association of University Women Educational Foundation (AAUW), states that four in five (81%) 8th through 11th grade public school students have experienced some form of sexual harassment in their school lives. Of these, 85 percent were girls and 76 percent were boys. The hallway and classrooms are the most common places harassment occurs. Most harassment is stu-



Source: *Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools*, commissioned by the American Association of University Women Educational Foundation, Washington, DC.

dent-to-student with nearly four in five (79%) students harassing peers. Eighteen percent of students who have been harassed cite adults as the perpetrators. In an unscientific survey of *Seventeen* readers, 89 percent of the girls reported they received unwanted looks and gestures. Eighty-three percent reported unwanted pinching, grabbing, or other touching. Girls of all races experience more sexual harassment than boys. According to the AAUW survey (1993), harassment creates situations where students do not want to go to school or talk as much in class. In addition, students find it hard to pay attention in school and stay home from school. Only seven percent of students who have been harassed say they have told a teacher, while 23 percent say they told a family member and another 23 percent say they told no one. In the *Seventeen* survey (Lawton, 1993), respondents indicated that when a teacher or administrator knew about an incident, nothing happened to the accused harasser in 45 percent of the cases. It is impossible to have a safe and equitable learning and/or employment environment when these conditions exist.

In an employment setting, females are especially vulnerable to sexual harassment. Young women teachers are more vulnerable to sexual harassment than older ones. Some employers and their employees see females in non-traditional fields as barging into areas where they do not belong and allow harassment. Some employers and their employees may harass women and girls of color as a form of racism or stereotyping. In a 1987 survey of federal employees, 35 percent of women experienced sexual remarks, 28 percent experienced suggestive looks, and 26 percent experienced deliberate touching (*Newsweek*, Oct. 10, 1991). The total number of sexual harassment cases submitted to the EEOC increased from 10,578 in 1992 to 12,537 in 1993. "Surveys show that only one in four women who are harassed ever report it their company because they fear retaliation or other negative impacts on their jobs and careers." (*The Webb Report*, 1994). Employers are legally responsible for eliminating sexual harassment in the workplace.

It is the school district's and, subsequently, each educator's responsibility to create a safe and equitable learning environment. This is fundamental to each student's academic success. Vocational teachers have an additional responsibility. They must teach employability skills, federal law, and its implications as part of the rights and responsibilities of being employed. Educators can empower students to report sex discrimination and sexual harassment, creating better working environments for all.

Definitions of Sexual Harassment

The most common way to look at sexual harassment is behaviorally. Sexual harassment is unwanted or unwelcome. It is sexual in nature or related to the sex or gender of the person being harassed. It usually occurs when one person has formal power (supervisory) over another, but it can also occur when one person has informal power (i.e. size, perceived popularity, tenure) over another.

The EEOC developed a definition in 1984 that is legally used. It states (*italics by authors*):

Harassment on the basis of sex is a violation of Sec. 903 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment *or educational program*,
2. submission to or rejection of such conduct by an individual is used as the basis for employment *or educational* decision affecting such individual, or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work *or academic* performance or creating an intimidating, hostile, or offensive working *or educational* environment.

The first two conditions are *quid pro quo* harassment and the last condition is considered hostile environment harassment.

Quid pro quo is when someone gives or withholds something, such as a grade, job, or letter of recommendation, depending on an individual's response to a request for sexual favors. Typically, the harasser is someone with formal power over the victim. For instance, a male vocational teacher may write a demeaning letter of recommendation for the best student because she refused to have sex with him, or a female supervisor may give a glowing performance review of a male teacher who agreed to have sex with her. Single incidences are enough to prove *quid pro quo*. The school district is liable for the harassment if the district knows about it and does nothing, or should know about it.

Hostile environment is more subtle and more prevalent than *quid pro quo*. It creates an atmosphere that interferes with a student's ability to learn or participate in the school setting or an employee's ability to work. The behavior is unwelcome and does not have to target a specific individual. The harasser may not be someone with formal power over the victim. Most peer-to-peer harassment is hostile environment. The less severe the conduct the more it must be repeated to qualify as sexual harassment. It may also occur off school grounds, such as on a school bus, in a school-related employment setting, or at a sporting event. The school district is liable if it knew or should have known that the harassment was happening and did not try to stop it.

Sexual Harassment Policies

Very few Ohio schools have clear, comprehensive sexual harassment policies. Technically, policies that deal with

Definitions

Sex discrimination--An illegal practice of treating males and females in different ways because of prejudice against their respective sex. A person(s) treats one sex less favorably and/or inequitably than the other in sports, dress codes, conduct, disciplinary measures, etc. There is unequal access to all programs, services, courses, etc. *Examples: Females are paid less than males for the same job. Teachers do not allow males to wear earrings in the lab but do allow girls to do so.*

Sexual harassment--A form of sex discrimination that includes any unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature. The unwanted sexual or gender-based behavior occurs when one person has formal or informal power over the other.

Quid pro quo--A form of sexual harassment when someone gives or withholds something in exchange for something else (i.e., this for that; if this, then that). Typically, the harasser requires sexual favors from the victim, rewarding the victim in some way. The harasser may also retaliate against the victim for refusing sexual favors. *Examples: A supervisor withholds the promotion of a subordinate employee because the employee refused to sleep with the supervisor. A teacher raises a student's grade to an A after the student received sexual advances from the teacher.*

Hostile environment--A form of sexual harassment when a victim is subjected to unwelcome repeated sexual comments, innuendoes, or touching, which creates an intimidating or offensive place for employees to work or students to go to school to the point that the individual is adversely affected on the job, in class, etc. *Examples: Graffiti with sexual innuendos is found in the locker rooms. Some boys whistled, panted, and ogled as a girl walked by.*

Unwelcome--A way of determining whether conduct is sexual harassment. It means the conduct was *not wanted or willingly permitted*. Although the victim may "voluntarily" submit to sexual advances or intercourse, the behavior may still be considered unwelcome. *Example: A student is afraid to refuse a teacher fondling him or her, allowing the fondling to occur.*

Source: Bernice Sandier, *Educator's Guide to Controlling Sexual Harassment*. (Washington, D.C.: Thompson Publishing Group, 1994).

sex discrimination would also include sexual harassment. But because sexual harassment is so complex and sensitive, school districts should develop separate sexual harassment policies, specifically describing sexual harassment, its forms, and grievance procedures. If a policy is *not* in place, a victim may not have clearly defined grounds upon which to file a sexual harassment complaint. Then the school district and its employees are more liable because a policy does not exist or is vague. In addition, the victim may have to identify a secondary violation of another policy (i.e., defacing property, assault, disorderly conduct, discipline) that really does not address the sexual harassment/discrimination issue. By the absence and/or vagueness of a sexual harassment policy, the school district sends the message that sexual harassment is acceptable behavior, and therefore, not prohibited. A strict, detailed policy is critical.

"I am shocked at how much harassment is going on. I was ignorant about the law. I didn't realize I had a legal obligation to protect my students from clients using our services."

Lynda Colley, Cosmetology Instructor, Scioto County JVS

Example of sexual harassment being treated as another lesser issue: A female high-school student learns from a male friend that sexually explicit and degrading comments are written about her on the boys' restroom wall. Horrified, she tells the principal who tells the janitor to wash the walls. The graffiti returns in a few days. The girl learns that it has reappeared on the wall. The principal continues to treat the problem as a building maintenance issue. He does not attempt to find out who is writing the comments nor does he try to remedy the situation by addressing the problem as a sexual harassment issue. The graffiti continues to reappear each time the walls are washed or painted. The girl becomes so upset that she becomes physically ill and misses school. Her parents contact the principal on her behalf. He states that the school will continue to wash the walls instead of treating the problem as a sexual harassment issue.

Involving other people in the policy development is critical. Include representation from students, teachers, staff, administrators, employers of vocational students, and school board members. Publicize a last draft among all

school employees, requesting comments and suggestions. Present the final draft to the local school board and have them adopt the policy.

Articulating the policy to students, teachers, staff, administrators, and employers of vocational students is essential. A policy needs to go beyond compliance and become an accepted standard of behavior. At the least, train all school employees in sexual harassment, its forms, ways to intervene, legal ramifications, and current policy and procedures. Those employees who are most likely to be contacted by individuals experiencing harassment (i.e., counselors, health personnel, and Title IX coordinators) need more comprehensive training. It is most helpful to show participants how to intervene and deal with sexual harassment.

"As educators,...we must see and hear sex-initiated behavior and violence toward females everywhere in the school. Look and listen, and then commit yourself to not look the other way."

David Warner, Vocational Orientation Specialist, Canton City Schools

It is also the responsibility of the school district to inform employers of vocational students about the policy. One way to initiate such a discussion is to include the policy in the training agreement. This gives the vocational teacher an opportunity to address specific rights and responsibilities of the school district regarding sexual harassment as it relates to the student's employment experience. Vocational teachers are legally responsible for addressing sex discrimination and sexual harassment issues with employers throughout the vocational employment experiences. The law holds teachers and employers liable if they know about discrimination and/or harassment and choose to ignore it. Vocational teachers must communicate with employers of vocational students about the legal ways to hire students. Employers can ask for a list of students who have certain skills, but not a list of only males, only cute blue-eyed blonds, etc. In addition, they cannot reject students for potential employment based upon their sex. Vocational teachers must work with employers to eliminate situations that may be sex discrimination or sexual harassment. The law requires them to legally terminate any obligations with employers who refuse to comply with sex discrimination and sexual harassment policies and directly violate federal law.

When the law, the school district's sex discrimination and sexual harassment policy, and the rights and responsibilities of the teacher and employers are communicated early in the school-employer relationship, the school district can eliminate many potential damaging situations or at least deal with them promptly.

The school district also needs to inform students and other school-related groups. Ways to distribute the policy and procedures include the following:

- Include the policy in student, faculty, and employee handbooks, giving equal space compared to other policies to ensure sufficient emphasis.
- Print the policy in the training agreement with employers of vocational students.
- Inform advisory committee members of the policy and procedures.
- Include information about sexual harassment in orientation for students, staff, and faculty.
- Use theater students to portray sexual harassment situations, including peer harassment.
- Use mock hearings on sexual harassment to inform people about procedures.
- Train students to be peer educators.
- Print the policy in the student newspaper at the start of each school year.
- Create and display posters on sexual harassment.

Schools Most Likely to Have Harassment Problems

Sexual harassment can occur in any school district. Schools are more likely to have serious forms of harassment occur as well as a greater number of incidents, if they:

- Have no policy prohibiting the behavior;
- Do not disseminate the policy widely or report information about incidents of sexual harassment;
- Condone or ignore behaviors that are demeaning to others such as sexually-offensive practical jokes, hazing activities, etc.;
- Do not intervene informally or officially when sexual harassment occurs;
- Do not quickly remove graffiti that is sexual in nature;
- Do not punish people who harass;
- Allow students to harass peers in nontraditional programs.

Adapted from: Bernice Sandler, *Educator's Guide to Controlling Sexual Harassment*, (Washington, D.C.: Thompson Publishing Group, 1994), pp. 18-19.

Specific Elements of a Sexual Harassment Policy

A sex discrimination and sexual harassment policy should include:

1. *A statement describing sexual harassment as illegal*, citing Title IX, Title VII, and other relevant federal and state laws that prohibit it in schools and the work place.
2. *A definition of sexual harassment*, with examples that expands the EEOC definition and includes *quid pro quo* and hostile environment harassment. Examples need to include students, teachers, staff, administrators, and employers of vocational students.
3. *A clear prohibition of these behaviors by anyone* mentioned above, guaranteeing that disciplinary action will be taken against perpetrators if found guilty. A short statement should note that the school district will treat false charges as a serious offense.
4. *A statement about retaliation*. Institutions may not discharge, threaten, harass, or otherwise discriminate against any employee, applicant for employment, person, or organization for making a charge or complaint, assisting in an investigation, participating in a proceeding, or opposing practices unlawful under these laws and regulations. Such retaliation is itself a violation of the law, regardless of whether the institution is found to have committed the discrimination that was the basis of the original charge or complaint.
5. *A grievance procedure for complaints or inquiries, both formal and informal*, which describes the multiple points of entry into the grievance procedure for information, assistance, and processing the complaint. Provision for a person of the alleged victim's or perpetrator's choice to be present during the investigation or inquiry is necessary. Confidentiality, when possible, is critical.
6. *A list of the people to contact if an individual is experiencing sexual harassment*. Provision for grievants to "go-around" their immediate supervisor or teacher to make a complaint is critical. It is best to identify both male and female contacts.
7. *A list of sanctions* reasonably calculated to end the sexual harassment and prevent its recurrence.
8. *An intent for regular public notice* that sexual harassment is strictly prohibited, that a policy exists, and who the contact individuals are.
9. *A guarantee that due process will be observed*.

Grievance Procedures and Investigations

Title IX requires all school districts receiving federal funds to have grievance procedures to handle complaints of sex discrimination by employees and students. These grievance procedures are to give guidelines on determining if discrimination and/or harassment has occurred, if the alleged offender is guilty, and what sanctions and/or remedies are appropriate. The policy must include formal procedures to use when a person files a sex discrimination or sexual harassment complaint. The formal procedure outlines how to conduct an investigation, who (i.e., panel, committee, or hearing board) is involved in determining policy violations, how to apply appropriate sanctions, and how to appeal the process.

Another way of handling sexual harassment complaints is informally. The purpose of informal procedures is to stop the behavior rather than determine the guiltiness or intent of the alleged offender. The offender may voluntarily agree to sanctions but official sanctions are not invoked without a formal hearing. Teachers often handle complaints about student-to-student harassment as informal procedures.

The Office of Sex Equity, Ohio Department of Education is developing a sexual harassment policy for the State Board of Education and a suggested policy for local school boards to adapt and adopt. These should be available by April 1995.

They address the student's complaints the same way they do other disruptive acts such as misconduct, disrespectful behavior, violation of dress code, etc. However, in order for sexual harassment complaints to receive serious consideration and sanctions such as expulsion, formal procedures are the only legal recourse.

The person(s) doing the investigation is often the school district's Title IX coordinator and other personnel identified to handle such complaints. Ideally, there are two complaint officers so investigations are quickly processed. These two complaint officers must be trustworthy, confi-

dential, and comfortable in handling sensitive and sexually-explicit information. It helps to have both a male and female as complaint officers as alleged victims may be more comfortable talking with one gender versus the other.

"If you question a situation, then ask someone who knows. It's better to be safe than sorry. Ask 'Should I let this go, should I discuss it with someone, or should I deal with it in a formal manner.'"

**Mary Beth Ditmer, West Building Principal,
Miami Valley Career Technology Center**

A fair and unbiased investigation (due process) is absolutely imperative. When an alleged victim or third party submits a complaint, the school district must handle it promptly and sensitively. The Title IX coordinator or the designated complaint officer should complete investigations within one to two days of receiving a complaint. Information is more likely to be accurate and the school district lessens its liability if it responds promptly.

Complaint officers must separately interview the alleged victim and the alleged perpetrator. Both have the right to a support person and/or representation during the interview. The purpose of the interview is to objectively gather the facts regarding the incident(s) and not to make judgments. Neutrally conveying concern/sympathy can be done, using phrases such as "This may be hard for you to talk about," "I can see that you're upset," "I'm sorry to have to ask you these questions." In addition, coordinators must contact and interview any witnesses of the incident(s). They must also document all information by taking thorough notes throughout the investigation process.

School personnel need to inform alleged victims and alleged perpetrators about the legal requirement of the school district to take all charges seriously and to take measures for remediation, as warranted. In addition, personnel must inform them that it is against the law to retaliate or engage in reprisals against anyone involved in an investigation. Confidentiality is another issue that school personnel must address. They must make every possible effort to ensure confidentiality even though they cannot guarantee it. Only people directly involved in the process should privately discuss only what is necessary.

If the school district and the Title IX coordinator do not conduct a thorough investigation, the school district shows reckless disregard. Examples of reckless disregard include being aware of a situation and ignoring it, dismissing or not believing an alleged victim, procrastinating in conducting all or part of the investigation, not talking to all people involved in the situation, not giving due process, spreading rumors of guilt or nonguilt, interfering with the investiga-

tion in any way, and personally discriminating against or harassing an employee or student.

Summary

Educators have a responsibility to address sex discrimination and sexual harassment in the school. According to federal laws, they are liable if they know or should know about discrimination and harassment and do nothing. For the protection of the district, educators, and students, school districts must develop clear, comprehensive sexual harassment policies. However, it is each and every educator's responsibility to go beyond compliance of the policy and create an accepted standard of respectful behavior among teachers, students, and employers.

The examples used throughout this publication are composites created from actual events. Any resemblance to specific cases is purely coincidental. These examples include situations that are not isolated instances but common situations found in schools.

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These resources are available for loan to Ohio vocational educators by contacting the Sex Equity Resource Library at the Center on Education and Training for Employment, 1900 Kenny Road, Columbus, Ohio 43210-1090; (614)292-4353 or (800)848-4815; Steve Chambers, Librarian.

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